

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Rule making related to general permits

The Environmental Protection Commission (Commission) hereby amends Chapter 60, “Scope of Title—Definitions—Forms—Rules of Practice,” and Chapter 64, “Wastewater Construction and Operation Permits,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 455B.103A, 455B.105(3) and 455B.173.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 455B.103A, 455B.105 and 455B.173.

Purpose and Summary

Several amendments are adopted in this rule making, none of which are major substantive changes.

First, this rule making renews National Pollutant Discharge Elimination System (NPDES) General Permit Nos. 1, 2, and 3 for storm water and NPDES General Permit No. 4 for private sewage disposal systems. These general permits were previously set to expire on February 28, 2023. Renewal of these permits is necessary because subrule 64.3(7) states that general permits are only valid for five years. The new effective dates for all four general permits will be March 1, 2023, through February 29, 2028.

Second, several amendments clarify and improve the readability of existing requirements. The revisions to NPDES General Permit Nos. 1 through 4, as well as the amendments to Chapter 60, update existing wording in the regulations, definitions, and standard conditions to match the administrative rules and federal regulations. These changes make the wording uniform, remove redundancies, and improve readability but do not affect the substance. For example, the existing maximum Total Suspended Solids limits are revised to be more user-friendly. The definition of “storm water discharge associated with industrial activity” in the general permits now clearly includes disturbances of less than one acre that are part of a larger common plan of development. This is already required in the federal regulations. Additionally, several clarifying amendments were requested by stakeholders, including several changes to NPDES General Permit No. 2 in particular. These amendments do the following:

- Clarify that seeding alone is insufficient to stabilize a site and that establishment of vegetative cover sufficient to preclude erosion is necessary to achieve stabilization.
- Clarify that other stabilization measures must continue to be implemented when necessary until seeded areas have achieved sufficient vegetative cover.
- Clarify that the definition of “final stabilization” includes areas covered by a permanent structure.

Copies of the adopted general permits are available upon request from the Department of Natural Resources (Department) and may be viewed at: www.iowadnr.gov/Environmental-Protection/Water-Quality/NPDES-Wastewater-Permitting/NPDES-Rules.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 7, 2022, as **ARC 6501C**. A public hearing was held on September 28, 2022, at 2 p.m. via video/conference call.

Two comments were received regarding the proposed changes to General Permit Nos. 1, 2, and 3. The first commenter requested that the construction site inspection frequency of once every seven calendar days, as noted in proposed General Permit No. 2, be modified to account for federal holidays. This inspection frequency matches the frequency in the Environmental Protection Agency's Construction General Permit for Stormwater Discharges from Construction Activities, effective on February 17, 2022. Thus, no change to General Permit No. 2 has been made.

The second commenter requested clarification of contradictory requirements in proposed General Permit Nos. 1 and 3 regarding data submission and data retention. The requirements in General Permit Nos. 1 and 3 referenced by the comment are also in General Permit No. 2. The data submission and retention requirements in the Notice of Intent (NOI) and records retention parts of proposed General Permit Nos. 1, 2, and 3 did not match the existing requirements in the NOI form or the requirements in the renotification parts of the general permits. Data submission is not required by the current NOI form, and a data summary is not required by the current renotification parts of the general permits. However, permittees need to retain records for three years, as noted in all three general permits. In response to this comment, language clarifying the requirements for data submission and retention has been added to General Permit Nos. 1, 2, and 3. Changes have been made to the NOI and records retention parts of the general permits (Parts II.C.1.E. of General Permit Nos. 1, 2 and 3; Part V.E. of General Permit Nos. 1 and 3; and Part V.A. of General Permit No. 2) to indicate that data is not required to be submitted with an NOI, renotification does not require the submission of a data summary, and all records used in the completion of an NOI shall be retained for three years.

No comments were received regarding the proposed changes to General Permit No. 4. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Commission on November 15, 2022.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. A copy of the fiscal impact statement is available from the Department upon request.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found. A copy of the jobs impact statement is available from the Department upon request.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on March 1, 2023.

The following rule-making actions are adopted:

ITEM 1. Amend rule ~~567—60.2(455B)~~, definition of “Storm water discharge associated with industrial activity,” as follows:

“Storm water discharge associated with industrial activity” means the discharge from any conveyance ~~which that~~ is used for collecting and conveying storm water and ~~which that~~ is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under 40 CFR Part 122. For the categories of industries identified in ~~paragraphs “1” to “10”~~ of this definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters (as defined at 40 CFR Part 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and ~~finished final~~ products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water.

For the categories of industries identified in paragraphs “1” to “9” and “11,” the term includes only storm water discharges from all the areas (except access roads and rail lines) that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. ~~For the purposes of this paragraph, purposes of this definition, material handling activities include the: storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished final product, by-product or waste product. To qualify for this exclusion, a storm-resistant shelter is not required for: drums, barrels, tanks and similar containers that are tightly sealed with bands or otherwise secured and have no taps or valves, are not deteriorated and do not leak; adequately maintained vehicles used in material handling; and final products other than products that would be mobilized in storm water discharge.~~ The term excludes areas located on plant lands separate from the plant’s industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, state, or municipally owned or operated) that meet the description of the facilities listed in paragraphs “1” to “11” of this definition) include those facilities designated under 40 CFR Section 122.26(a)(1)(v). The following categories of facilities are considered to be engaging in “industrial activity” for purposes of this definition:

1. No change.
2. Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283 and 285), 29, 311, 32 (except 323), 33, 3441, 373; within Standard Industrial Classification 24, Industry Group 241 that are rock crushing, gravel washing, log sorting, or log storage facilities operated in connection with silvicultural activities defined in 40 CFR Sections 122.27(b)(2)-(3) and Industry Groups 242 through 249; 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373; (not included are all other types of silviculture facilities);
3. Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR Section 434.11(1)) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990;) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with, or that has come into contact with, any overburden, raw material, intermediate products, finished products, by-products or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

4. No change.
5. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this definition) including those that are subject to regulation under Subtitle D of RCRA;
6. and 7. No change.
8. Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-4225), 43, 44, 45 and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs “1” to “7” or “9” ~~or to “11”~~ of this definition are associated with industrial activity;
9. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR Part 403. Not included are farmlands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with ~~40 CFR Part 503~~ Section 405 of the Clean Water Act;
10. Construction activity including clearing, grading and excavation, ~~activities except operations that result in the disturbance of less than 5 acres~~ one acre of total land area which is not part of a larger common plan of development or sale. Effective March 10, 2003, construction activity including clearing, grading and excavation activities except operations that result in the disturbance of less than 1 acre of total land area which is not part of a larger common plan of development or sale. Construction activity also includes the disturbance of less than one acre of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more;
11. Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221-4225 ~~(and which are not otherwise included within paragraphs “2” to “10”).~~

ITEM 2. Amend subrule 64.15(1) as follows:

64.15(1) Storm Water Discharge Associated with Industrial Activity, NPDES General Permit No. 1, effective March 1, ~~2018~~ 2023, to February 28, ~~2023~~ 29, 2028. Facilities assigned Standard Industrial Classification 1442, 2951, or 3273, and those facilities assigned Standard Industrial Classification 1422 or 1423 which are engaged primarily in rock crushing are not eligible for coverage under General Permit No. 1.

ITEM 3. Amend subrule 64.15(2) as follows:

64.15(2) Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2, effective March 1, ~~2018~~ 2023, to February 28, ~~2023~~ 29, 2028.

ITEM 4. Amend subrule 64.15(3) as follows:

64.15(3) Storm Water Discharge Associated with Industrial Activity from Asphalt Plants, Concrete Batch Plants, Rock Crushing Plants, and Construction Sand and Gravel Facilities, NPDES General Permit No. 3, effective March 1, ~~2018~~ 2023, to February 28, ~~2023~~ 29, 2028. General Permit No. 3 authorizes storm water discharges from facilities primarily engaged in manufacturing asphalt paving mixtures and which are classified under Standard Industrial Classification 2951, primarily engaged in manufacturing Portland cement concrete and which are classified under Standard Industrial Classification 3273, those facilities assigned Standard Industrial Classification 1422 or 1423 which are primarily engaged in the crushing, grinding or pulverizing of limestone or granite, and construction sand and gravel facilities which are classified under Standard Industrial Classification 1442. General Permit No. 3 does not authorize the discharge of water resulting from dewatering activities at rock quarries.

ITEM 5. Amend subrule 64.15(4) as follows:
64.15(4) “Discharge from Private Sewage Disposal Systems,” NPDES General Permit No. 4,
effective March 1, ~~2018~~ 2023, to February ~~28, 2023~~ 29, 2028.

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/14/22.